

REMARKS/ARGUMENTS

The Office Action dated July 28, 2003, 2003 has been received and its contents carefully considered. Claims 2-9, 12-18 and 20-26 are pending. Claims 20, 22 and 25 have been amended. Claim 2-9, 12-18 and 20-26 have been rejected.

Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

CLAIM OBJECTIONS

Claims 20, 22 and 25 were objected to because of informalities. The aforementioned claims have been amended to correct of the informalities.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 4, 5, 8, 12-15, 17 and 20-23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Howard. Regarding claim 4, it is respectfully submitted that Howard does not teach, *inter alia*, a mechanical fluid level monitoring device for an incubator comprising “a mechanical liquid level gauge mounted flush with a face of the incubator a scale disposed on said liquid level gauge” as recited in claim 4. In the previous Office Action, the Examiner admits that Howard does not teach a scale disposed on the liquid level gauge as recited in claim 4. Furthermore, the Examiner contends that one of ordinary skill in the art would have been inclined to place a scale on the gauge to have an accurate measurement of liquid present in the incubator. The Examiner has failed to rely on an additional reference to cure the deficiency of

Howard, and thus, if a rejection on this basis is maintained, it is respectfully requested that the Examiner provide a reference or elaboration in support of the rejection.

In accordance with the M.P.E.P. §2142, to establish a *prima facie* case of obviousness there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching.

In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re: Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970). Since the prior art does teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested.

Additionally, the Examiner admits that Howard does not teach the gauge mounted flush with a face of the incubator as recited in claim 4 of the present invention. The Examiner contends that “to orient the gauge flush with the face of the incubator in Howard would have been obvious to the skill artisan at the time of the invention” because “orienting the gauge flush with the face would provide needed information at a close proximity and keep the gauge from being bulky and free from protrusions.” It appears that the Examiner is relying upon hindsight reasoning based upon Applicants disclosure of the present invention. The Examiner has failed to rely on an additional reference to cure the deficiency of Howard, and thus, if a rejection on this basis is maintained, it is respectfully requested that the Examiner provide a reference or

elaboration in support of the rejection. Since the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested.

Claims 5 and 8 depend from independent claim 4 and are patentable over the cited prior art for at least the same reasons as is claim 4.

Regarding claim 14, it is respectfully submitted that Howard does not teach, *inter alia*, a mechanical fluid level monitoring device comprising a “mechanical means for monitoring a level of fluid...wherein said monitoring device is mounted flush with said face.” The Examiner admits that Howard does not teach a fluid level monitoring device mounted flush with the face of the incubator. The Examiner has failed to rely on an additional reference to cure the deficiency of Howard, and thus, if a rejection on this basis is maintained, it is respectfully requested that the Examiner provide a reference or elaboration in support of the rejection. Since the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested.

Claims 12, 13, 15 and 17 depend from independent claim 14 and are patentable over the cited prior art for at least the same reasons as is claim 14.

Regarding independent claim 20, it is respectfully submitted that Howard does not teach, *inter alia*, a method of mechanically monitoring a fluid level in an incubator environment comprising “providing a mechanical liquid level gauge mounted flush with a face of the incubator...visibly monitoring a liquid level through said mechanical gauge” as recited in claim 20. The Howard reference does not “provide a mechanical liquid level gauge mounted flush with a face of the incubator” as recited in claim 20. Thus, all the claim limitations have not been

taught or suggested by the prior art as required by the M.P.E.P. Since, the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested.

Claims 21, 22, and 23 ultimately depend from independent claim 20 and are patentable over the cited prior art for at least the same reasons as is claim 20.

Claims 2, 3, 6, 7, 9, 16, 18 and 24-26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Howard in view of the admitted prior art.

Claims 2, 3, 6, 7, 9 and 25 ultimately depend from independent claim 4. It is noted that claim 4 was not included in the rejection under 35 U.S.C. §103(a) as being unpatentable over Howard in view of the admitted prior art. Nevertheless, the admitted prior art does not cure the deficiencies of Howard. The Examiner admits, in discussions regarding claim 3 for instance, that the admitted prior art nor Howard discloses a scale as recited in claim 4. The Examiner contends that to orient a scale would have been obvious to the skilled artisan at the time of the invention. The Examiner has failed to rely on an additional reference to cure the deficiencies of Howard, alone or in combination with the admitted prior art and thus, if a rejection on this basis is maintained, it is respectfully requested that the Examiner provide a reference or elaboration in support of the rejection. Since the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested.

Claims 2, 3, 6, 9 and 25 ultimately depend from independent claim 4. It is believed that they are also patentable over the cited prior art for at least the same reasons as is claim 4.

Claims 8, 16, 18 and 26 ultimately depend from independent claim 14. It is noted that independent claim 14 was not included in the rejection under 35 U.S.C. §103(a) as being unpatentable over Howard in view of the admitted prior art. Nevertheless, the admitted prior art

does not cure the deficiencies of Howard because it does not teach, *inter alia*, means for mounting the fluid level monitoring device into a face of an incubator wherein said monitoring device is mounted flush with said face, as recited in claim 14. In discussions regarding claim 2 the Examiner admits that Howard does not show a liquid level gauge disposed on the front face of the incubator. The Examiner contends that the admitted prior art disposes a liquid level gauge that is mounted on the front face of the incubator, however, the mounting is not flush as recited in independent claim 14. The Examiner has failed to rely on an additional reference to cure the deficiency of Howard, and thus, if a rejection on this basis is maintained, it is respectfully requested that the Examiner provide a reference or elaboration in support of the rejection. Since the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested. Since claims 16, 18 and 26 ultimately depend from independent claim 14 it is believed that they are patentable over the cited prior art for at least the same reasons as is claim 14.

Claims 24 depends from independent claim 20. It is noted that claim 20 was not included in the rejection under 35 U.S.C. §103(a) as being unpatentable over Howard in view of the admitted prior art. Nevertheless, the admitted prior art does not cure the deficiencies of Howard because there is no teaching of “providing a mechanical liquid level gauge mounted flush with a face of the incubator” as recited in independent claim 20. Since the prior art does not teach or suggest all the claimed features, withdrawal of the rejection is respectfully requested. Since claim 24 depends from independent claim 20 it is believed that it is also patentable over the cited prior art for at least the same reasons as is claim 20.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests objections and rejections. If, for any reason, the Examiner disagrees, please call the undersigned attorney at 202-861-1703 in an effort to resolve any matter still outstanding before issuing another action. The undersigned attorney is confident that any issue which might remain can readily be worked out by telephone.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read 'Marc W. Butler', is written over a horizontal line.

Marc W. Butler
Reg. No. 50,219

Date: October 28, 2003
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783